

**REMARKS**

**Status of the Claims**

The final Office Action mailed December 29, 2009 noted that claims 1-3, 7 and 12-26 were pending and rejected all claims. No claims are amended. No claims are cancelled. No new claims are added. No new matter is believed to be presented.

It is respectfully submitted that claims 1-3, 7 and 12-26 are pending and under consideration.

**Rejection under 35 U.S.C. § 102(e)**

The Office Action, on page 2, rejected claims 1-3, 7 and 12-26 under 35 U.S.C. § 102(e) as being anticipated by Smith. This rejection is respectfully traversed below.

It is respectfully submitted that nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke," recited in claim 1. Smith specifically discusses that when a mouse pointer is moved into the region defined by the spot GDE, four quadrants are displayed after a delay. It is clear that these quadrants may not be selected until displayed. When the mouse pointer of Smith is then moved into any one of the four displayed quadrants, that quadrant is selected and a secondary interface associated with that quadrant is displayed after another delay. (See Smith, column 2, line 60 to column 3, line 10). Thus, Smith does not discuss that a selection from the menu is made without the displaying the menu with a single, uninterrupted stroke. A selection of a quadrant from Smith may not be made without displaying the four quadrants, thus Smith cannot discuss "a selection from the menu is made **without displaying the menu** with a single, uninterrupted stroke." It is clear that a user of Smith's GDE cannot make a selection of any of the quadrants or secondary interfaces without the menu appearing contrary to the distinctive features recited in claim 1.

Furthermore, as admitted by the Office Action, a selection may not be made with "a single, uninterrupted stroke" because Smith requires that a user specified length of time pass before displaying the quadrants. Another user specified length of time is required for displaying a secondary interface associated with a quadrant when a quadrant is selected. Therefore, a user must wait one length of time to select a quadrant and two lengths of time to select a secondary interface. Thus, Smith fails to discuss a selection via "a single, **uninterrupted stroke**." As clearly shown in Figure 6, this is not possible in Smith because there is a delay or interruption before the quadrants display and another delay or interruption before the secondary

interface displays. Therefore, claim 1 patentably distinguishes over Smith.

Claim 7 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 12 patentably distinguishes over Smith because nothing cited or found in Smith discusses "the menu item selection is made without displaying the menu with a single, uninterrupted stroke."

Claim 13 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 14 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 15 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 16 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 17 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke."

Claim 18 patentably distinguishes over Smith because nothing cited or found in Smith discusses "the radial marking menu portion represents a grouping of menu items based upon frequency of selection." The Office Action cited to Figure 3E of Smith, but nothing in Figure 3E or elsewhere in Smith discusses grouping of menu items based upon frequency of selection. Smith, in column 6, lines 4-6 merely discusses that Figure 3E shows interface 308 as locked and can be unlocked by clicking on the lock icon 308b. Additionally, Smith does not discuss "selecting, based on the stroke, a second item of the menu, **when the stroke does not terminate inside any displayed items of the menu.**" Smith requires that a mouse pointer be moved over a quadrant in order for the quadrant to be selected. (See Smith, Abstract and Figure 3A).

Claim 19 patentably distinguishes over Smith because nothing cited or found in Smith discusses "the radial marking menu portion represents a grouping of menu items based upon frequency of selection." The Office Action cited to Figure 3E of Smith, but nothing in Figure 3E or elsewhere in Smith discusses grouping of menu items based upon frequency of selection. Smith, in column 6, lines 4-6 merely discusses that Figure 3E shows interface 308 as locked and can be unlocked by clicking on the lock icon 308b. Additionally, Smith fails to discuss "selecting, based on the stroke, a second item of the menu, when the stroke is in a second radial portion of the menu and **when the stroke does not terminate inside any displayed items of the menu.**" Smith requires that a mouse pointer be moved over a quadrant in order for the quadrant to be selected. (See Smith, Abstract and Figure 3A).

Claim 20 patentably distinguishes over Smith because nothing cited or found in Smith discusses "the menu selection is made without displaying the menu with a single, uninterrupted stroke."

Claim 23 patentably distinguishes over Smith because nothing cited or found in Smith discusses "the menu selection is made without displaying the menu with a single, uninterrupted stroke."

Claim 26 patentably distinguishes over Smith because nothing cited or found in Smith discusses "a computer accepting a selection of an item from the menu responsive to a single, uninterrupted stroke, where the selection can be made when the menu is not visible." Furthermore, the Office Action has failed to cite to any section of Smith regarding "where selectable items in the radial marking menu sub-menu are included based on a priority" and merely lumped its rejection of claim 26 with its rejection based on claim 1. It is submitted that Smith does not discuss "selectable items in the radial marking menu sub-menu are included based on a **priority.**" Smith fails to discuss selectable items based on a priority.

The dependent claims depend from the above-discussed independent claims and are patentable over Smith for the reasons discussed above. The dependent claims also recite additional features not discussed by Smith. For example, claim 22 recites "the radial menu item selection is reactivated when the pointer location exits a linear item in the linear portion." The Office Action failed to provide any detailed rejection regarding claims 21 and 22 and merely lumped a rejection of claim 21 on page 5 based on its rejection of claim 20. Applicants are at a disadvantage for responding to the Office Action because the Examiner has failed to provide any *prima facie* rejection of each and every feature in claim 21. However in an effort to advance prosecution, the following remarks are provided.

Smith fails to discuss "the radial menu item selection is reactivated when the pointer location exits a linear item in the linear portion," recited in claim 21. In other words, the radial menu item may not be selected when the pointer is in a linear portion. Smith does not discuss this distinctive feature. It is submitted that the dependent claims are independently patentable over Smith.

### Summary

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

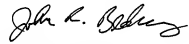
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 3-26-10

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